

Williams - Highly Confidential - Trade Secret

A F T E R N O O N S E S S I O N

1:39 p.m.

THE VIDEO OPERATOR: It is 1:39. We are on the record.

D A V I D L E E W I L L I A M S,
resumed, having been previously duly sworn, was
examined and testified further as follows:

CONTINUED EXAMINATION

BY MR. DUNNE:

Q. Good afternoon, Mr. Williams.

A. Good afternoon, Mr. Dunne.

Q. Do you understand you're still under
oath?

A. Yes.

Q. Did you consult with Mr. Nunley
during the lunch break?

A. I just had lunch.

Q. Did you all have any discussions at
all pertaining to this case?

A. We briefly talked about situations,
but I don't recall anything in particular about
the case.

Q. I'm not asking about substance.

MANHATTAN REPORTING CORP.

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01:39:56 2 A. No substance.

01:40:02 3 MR. DUNNE: Let me ask the reporter

01:40:12 4 to mark as Defendants Williams Number 29 a

01:40:20 5 document numbered PC 203492, Philip Morris number

01:40:28 6 2031458705. It's a two-page document.

7 (Williams Exhibit 29 for

8 identification, received June 18, 1987, F. L.

01:40:40 9 Daylor.)

01:41:24 10 Q. Have you had a chance to look at this

01:41:24 11 document?

01:41:26 12 A. Yes.

01:41:26 13 Q. Have you seen this document before?

01:41:28 14 A. Yes, I have.

01:41:30 15 Q. Could you describe to me what this

01:41:30 16 document is?

01:41:34 17 A. This is a semi-quantitative

01:41:40 18 disclosure for the flavor 04-209 which Philip

01:41:42 19 Morris purchases from IFF.

01:41:46 20 Q. This was a disclosure that IFF sent

01:41:46 21 to Philip Morris?

01:41:50 22 A. Yes.

01:41:50 23 Q. Do you know when this disclosure

01:41:52 24 would have been sent to Philip Morris?

01:41:58 25 A. Based on the date on the side it

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01:42:02 2 looks like maybe June of 1987.

01:42:06 3 Q. When you say a "semi-quantitative
01:42:08 4 disclosure," what do you mean?

01:42:10 5 A. The information appears to be given
01:42:14 6 in ranges rather than exact amount. So you can't
01:42:16 7 say exactly what the level of an ingredient is in
01:42:20 8 there, but you can say it's between these two
01:42:22 9 levels, for instance, that they -- that they've
01:42:22 10 referred to.

01:42:24 11 For instance, it says "Items equal to
01:42:28 12 or greater than 5 percent but less than 10
01:42:30 13 percent," it would be between 5 percent and 10
01:42:30 14 percent.

01:42:36 15 Q. And this is a list of ingredients in
01:42:36 16 the flavor 04-209; is that correct?

01:42:38 17 A. Yes.

01:42:44 18 Q. Towards the middle of the page,
01:42:48 19 underneath "Items equal to or greater than 5
01:42:50 20 percent but less than 10 percent," the second
01:42:54 21 entry appears to be "TOB extract." Does that
01:42:58 22 refer to tobacco extracts?

01:42:58 23 A. Yes, it does.

01:43:00 24 Q. Does it appear to you that extract is
01:43:04 25 in different typeface than the surrounding

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words?

MR. NUNLEY: The document speaks for
itself, but David, you can answer.

A. I have no idea -- no. I don't know
if that's a different typeface or not. It looks
to be maybe a little lighter than the word below
it, but it may be equal to the things below it.
I don't know.

Q. Does Philip Morris put typewritten
notations on documents like this that it receives
from vendors?

A. As far as flavor formulation
disclosures are concerned?

Q. Yes.

A. I never heard of that.

Q. Do you see the redaction next to
"Tobacco extract"?

A. Yes, I do.

Q. Do you know what information -- what
type of information would have been on that line
where it's redacted?

A. Unfortunately I don't know what that
would have been without looking at the unredacted
version. If my memory is correct, this redaction

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was done prior to the ABC case. I don't know
what it's in reference to.

It looks like it might have been done
by Frank Daylor. Maybe he was sending the
information to someone and he didn't want them to
see exact levels or something like that. I don't
know.

Q. Was flavor 04-209 used in cigarettes
manufactured and sold in the United States?

A. Yes, it was.

REQ MR. DUNNE: I'll request, if such a
document exists, that Philip Morris provide us
with an unredacted version just of this line.

A. It's my understanding, based on --

MR. NUNLEY: There's no question.

THE WITNESS: No question? Sorry.

Q. Is it correct to conclude from this
document that flavor 04-209 contained between 5
percent and 10 percent tobacco extract?

A. Yes, that would be a conclusion you
could draw.

Q. Is that in fact the case, to the best
of your understanding?

A. That is in fact the case. In fact,

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in later disclosure information, I think we
determined that it's 7 percent.

Q. When Philip Morris received this
disclosure in 1987, did Philip Morris know the
exact percentage of tobacco extract in 04-209?

A. If we did, I'm not aware of it at
that time.

Q. Did Philip Morris analyze 04-209 for
nicotine content in 1987?

A. If we did, again, I'm not aware of
it.

Q. Is there any way to tell from this
document what the nicotine content of the tobacco
extract listed was?

A. No. You could not determine just by
this information, because you just have an idea
of what the level of tobacco extract is, not the
nicotine level.

Q. And so based on this document you
also could not determine what the nicotine
content of 04-209 was on this date?

MR. NUNLEY: On which date?

MR. DUNNE: 1987.

A. That's correct. As of 1987, without

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additional information, you couldn't determine
that.

Q. Further down the page, under "Items
equal to or greater than zero percent but less
than 1 percent," do you see the first entry?

A. Yes.

Q. Could you read that for me?

A. That is alcohol SDA-4.

MR. NUNLEY: Well, you can --

A. It says ALC, SDA-4.

MR. NUNLEY: You can tell him what
you understand that to mean, but if he asks you
to read it, just read it literally off the page.

Q. And your understanding is that refers
to alcohol denatured with nicotine?

A. I understand that's the alcohol that
is used in the tobacco industry as that's
denatured with nicotine sulfate.

MR. DUNNE: I'll ask the reporter to
mark as Defendants Williams Number 30 ABC
document number PW203475 through 491, Philip
Morris document number 2031458688 through 8704.

(Williams Exhibit 30 for
identification, International Flavors and

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Fragrances formula disclosure report.)

Q. Have you seen this document before?

A. Yes, I have.

Q. Could you describe it for me.

A. This -- I'm not sure. This is a
quantitative disclosure of the flavor 04-364
purchased from IFF.

Q. This is a disclosure that was drafted
by IFF; is that correct?

A. That's correct.

Q. Can you tell from looking at this
document when the document would have been
received by Philip Morris?

A. Based on the stamp, you would say
September of 1992.

Q. Which stamp are you referring to?

A. The stamp on the first page which is
sort of in the middle of the page, sideways.

Q. Does your office stamp these
disclosures when they arrive at your office?

A. It's the general practice that we do,
although there are some times when we forget to
do that.

Q. On the third page of this exhibit,

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number PC 203477, do you see there's a stamp,
"Attorney work products"?

A. Yes.

Q. Would you have stamped this "Attorney
work products"?

A. Most likely I did, although Frank
Daylor may have.

Q. Would that have been pursuant to his
general instruction to you that you described
earlier?

A. Yes, it would.

Q. The second item listed on this page
appears to be "Tobacco extract"; is that
correct?

A. Yes.

Q. And next to that there is the number
7.0?

A. Yes.

Q. Could you tell me your understanding
of what that number represents?

A. It's my understanding this is a
weight percent of the tobacco extract in flavor
04-364.

Q. Is this a number that IFF supplied to

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Philip Morris?

A. Yes, it is.

Q. Could Philip Morris have determined
this number through its own analysis?

A. I do not know what analysis that you
can carry out that will say what the level of a
tobacco extract is in a compounded flavor,
because a tobacco extract is a complicated
mixture.

Q. Is there -- does this disclosure
indicate how much nicotine would have been
contained in this tobacco extract?

A. No, it doesn't.

Q. Does it indicate how much nicotine
would have been contained in 04-364?

A. No, it doesn't.

Q. Under "Tobacco extract," the last
line says, "Comments, 1: EEC equals
84961-66-0." Do you know what that refers to?

A. I don't know what the EEC refers to.
That appears to be the chemical abstract service
number for tobacco extract.

Q. Do you see where it says "TSCA: Y,"
just above it, two lines above?

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01:52:44 2 A. Yes.

01:52:46 3 Q. Do you know what that refers to?

01:52:56 4 A. I've heard the list called TSCA, but
01:52:58 5 I'm not that familiar with it. I've just heard
01:52:58 6 it.

01:53:00 7 Q. Do you know what the Y refers to?

01:53:00 8 A. No.

01:53:14 9 Q. Two pages later, PC 203479.

01:53:14 10 A. Okay.

01:53:16 11 Q. Towards the bottom of the page
01:53:20 12 there's an entry for an ingredient, smoke
01:53:22 13 extract.

01:53:22 14 A. Yes.

01:53:24 15 Q. Next to that there's the number 1.2.

01:53:24 16 A. That's right.

01:53:26 17 Q. What's your understanding of that
01:53:26 18 number?

01:53:28 19 A. That number, again, would be a weight
01:53:34 20 percent number of the smoke extract that's in the
01:53:34 21 flavor 04-364.

01:53:38 22 Q. Can you describe smoke extract for
01:53:38 23 me?

01:53:44 24 A. Based on the information that's given
01:53:48 25 here, it refers to smoke extract that's

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pyroligneous acids. My understanding of
pyroligneous acids in smoke extract used here is
it's a wood, smoke extract from wood, or an
extract from wood.

Q. Would this extract contain nicotine?

A. It would not.

Q. Were you involved in redacting this
document for purposes of this lawsuit?

A. I was involved in the redaction of
these documents or these type documents, yes.

Q. Do you know why the 1.2 would not
have been redacted?

A. As I recall, I believe it was one of
the items that ABC requested be left unredacted,
and one of the redactions that we were doing, I
think there was a list of around 50 ingredients
or so, and I think smoke extract may have been
one of those.

Q. At page PC 203483, there's a
reference to ethyl alcohol.

A. Yes.

Q. Can you tell by looking at this entry
whether that refers to ethyl alcohol denatured
with nicotine?

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01:55:14 2 A. Based on the way this is disclosed, I
01:55:16 3 would say it's straight or grain alcohol, just
01:55:20 4 ethyl alcohol, and not denatured ethyl alcohol.

01:55:20 5 Q. And what's your basis for that
01:55:22 6 conclusion?

01:55:24 7 A. Because IFF normally indicates when
01:55:28 8 they denature an ethyl alcohol. In fact I
01:55:30 9 believe all the time they would indicate whether
01:55:32 10 or not they denatured alcohol or not.

01:55:38 11 Q. And do they have a practice of using
01:55:44 12 denatured alcohol in place of straight ethyl
01:55:44 13 alcohol?

01:55:44 14 MR. NUNLEY: You mean in flavors
01:55:46 15 supplied to Philip Morris?

01:55:48 16 MR. DUNNE: Yes, in flavors supplied
01:55:50 17 to Philip Morris.

01:55:50 18 A. Rephrase it again.

01:55:52 19 Q. Do they have a practice of using
01:55:54 20 denatured alcohol rather than straight ethyl
01:55:56 21 alcohol in flavors supplied to Philip Morris?

01:55:58 22 MR. NUNLEY: Objection as to form.

01:56:00 23 A. I wouldn't say they have a practice.
01:56:04 24 I have seen disclosures that contain denatured
01:56:06 25 alcohol. I have seen disclosures that do not.

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Q. Again referring back to PC 203477, is it your understanding that the tobacco extract listed there contains nicotine?

A. Just by looking at this document you would not know that. But based on information through analyses we know that it does contain nicotine.

Q. Through analyses that Philip Morris has done in-house?

A. That's correct.

MR. DUNNE: I ask the reporter to mark as Defendants Williams Number 31 a document number PC 203459 through 474, Philip Morris number 2031458672 through 8687.

(Williams Exhibit 31 for identification, International Flavors and Fragrances formula disclosure report, received September 1, '92.)

Q. Have you seen this document before?

A. Yes, I have.

Q. Could you describe it for me?

A. This represents a quantitative disclosure of the flavor 04-424, which was purchased from IFF.

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01:58:28 Q. By Philip Morris?

01:58:28 A. By Philip Morris.

01:58:36 Q. Can you tell me when this document
01:58:36 was received by Philip Morris?

01:58:38 A. Again, based on the stamp in the
01:58:42 middle of the page, on the first page, it looks
01:58:44 like September of 1992.

01:58:50 Q. Turning to the third page, PC 203461,
01:58:56 next to the words "Tobacco extract," there is the
01:59:00 figure 7.0. What's your understanding of that
01:59:02 figure?

01:59:02 A. Again, that figure represents the
01:59:06 weight percent of the tobacco extract in the
01:59:10 compounded flavor 04-424.

01:59:14 Q. So flavor 04-424 which Philip Morris
01:59:20 bought from IFF contained 7 percent extract; is
01:59:22 that correct?

01:59:22 A. That's correct, based on this
01:59:22 disclosure.

01:59:24 Q. Is this percentage weight over
01:59:24 weight?

01:59:26 A. This is weight percent, so it would
01:59:28 be weight over weight.

01:59:30 Q. Do you know what type of tobacco

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01:59:34 2 extract was contained in 04-424?
01:59:40 3 A. You would not know from this
01:59:40 4 document.
01:59:42 5 Q. Do you know independent of this
01:59:46 6 document what type of tobacco extract was
01:59:48 7 contained in 04-424?
01:59:50 8 A. I'm trying to jog my memory, but I
01:59:52 9 think it was a Kentucky tobacco extract, referred
01:59:54 10 to as a Kentucky tobacco extract.
01:59:58 11 Q. Do you know the nicotine content of
01:59:58 12 that tobacco extract?
02:00:00 13 A. Of the tobacco extract?
02:00:02 14 Q. Yes.
02:00:06 15 A. Again, referring back to that
02:00:08 16 document we discussed previously -- well, right
02:00:12 17 before we broke for lunch, the one that came from
02:00:18 18 Jake Kawala, either that represented the tobacco
02:00:22 19 extract label -- tobacco extract level in a
02:00:28 20 compounded flavor, or it represented the nicotine
02:00:30 21 level in the tobacco extract.
02:00:36 22 Q. The 7.0 figure, is that what you're
02:00:36 23 referring to?
02:00:36 24 A. Yes.
02:00:38 25 Q. And you're not sure which one it

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referred to; is that correct?

A. In my mind that's a bit fuzzy,
whether it refers to the tobacco extract level in
the flavor or the nicotine level in the tobacco
extract.

Q. Apart from that document, do you have
any knowledge of the nicotine content of the
tobacco extract listed here?

A. Yes. There was a -- I believe it was
run in early 19 -- in the first quarter of 1994,
so some time period in that area. An analysis
was run on 04-424 by Mike Zimmermann.

Q. And that analysis told you the
percentage of nicotine in this tobacco extract?

A. No. It did not.

Q. What did that analysis tell you about
nicotine levels?

A. That analysis told us the level of
nicotine in the flavor 04-424.

Q. And this analysis was done in the
first quarter of 1994?

A. To the best of my memory, yes.

Q. I think you testified earlier that
04-424 was no longer in use by Philip Morris by

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the beginning of 1994; is that correct?

A. That is correct.

Q. Why would you be analyzing a flavor
that Philip Morris was no longer using?

A. I don't know exactly why we would be
analyzing it, but it would be to determine not
only current flavor nicotine levels but prior
nicotine levels in compounded flavors. We would
have had samples on hand. Like I told you
before, there are samples retained in the flavor
center.

We would have had samples available
to us. So we went ahead and ran the whole gamut
of flavors that we could find that were
available.

Q. Including -- I'm sorry.

A. That were available at the time that
we could get our hands on.

Q. Including flavors that were
obsolete?

A. Yes.

Q. Were there any flavors that were
obsolete that you could not put your hands on
that you intended to ask for a nicotine

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analysis?

A. I don't think that's the way we
approached it. I'm trying to remember. I
believe we determined -- tried to determine the
flavors that contained -- that had contained
tobacco extract, and then ran analysis on all
samples that were available to us that we had on
those samples.

If there were samples that we used to
use that contained tobacco extract and they
weren't available, we would not have obviously
been able to run the analysis.

MR. DUNNE: I'll ask the reporter to
mark as Defendants' Exhibit Number 32 --

MR. NUNLEY: Williams.

MR. DUNNE: Williams Number 32. This
document is Bates number PC 203954 through 56,
Philip Morris number 2031459202 through 04.

(Williams Exhibit 32 for
identification, letter to David Williams from
Deborah Kennison.)

A. Okay.

Q. This appears to be a letter from
Deborah Kennison to you dated September 12th,

1 Williams - Highly Confidential - Trade Secret
02:05:48 2 1991, with a list of ingredients attached; is
3 that correct?

02:05:50 4 A. That's correct.

02:05:54 5 Q. Could you tell me who Deborah
02:05:54 6 Kennison is?

02:06:00 7 A. Deborah Kennison is -- I believe a
02:06:06 8 flavor chemist or a flavorist for Crompton &
02:06:08 9 Knowles that works -- I'm not sure if she just
02:06:12 10 works in the tobacco area or tobacco and other
02:06:14 11 flavor area as well, but I know she works on
02:06:16 12 tobacco flavors as well.

02:06:18 13 Q. When is the last -- strike that.
02:06:22 14 Have you ever spoken to Ms. Kennison?

02:06:22 15 A. Yes, I have.

02:06:24 16 Q. When is the last time you spoke with
02:06:24 17 her?

02:06:32 18 A. It hasn't been that long ago.
02:06:36 19 Sometime this year, to discuss some flavor
02:06:36 20 revisions.

02:06:40 21 Q. Have you ever discussed this lawsuit
02:06:42 22 with Ms. Kennison?

02:06:50 23 A. If I did it came up in joking or
02:06:52 24 passing. Nothing of any substance.

02:06:54 25 Q. Do you recall anything at all about

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talking with her about this lawsuit?

A. Only that -- I think I remember she indicated she may have to give a deposition. I said I was sorry to hear that, sorry to put you through that. That's all I can recall.

Q. Did she indicate why she thought she might be subject to deposition?

A. No, but I assumed that it would be to discuss disclosure information, because she is the one that we go to for disclosures.

Q. Have you ever discussed with Ms. Kennison the ABC News reports at issue here?

A. I don't recall doing that at all.

Q. Have you ever discussed with her any of the ABC reporters involved in this case?

A. No.

Q. Or any discussions she might have had with any ABC reporters in this case?

A. I don't recall that.

Q. You don't recall --

A. Reporters? No, I don't recall anything about reporters at all, or talking with people about the case or anything of that nature.

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02:08:12 2 Q. Would Ms. Kennison, to the best of
02:08:16 3 your knowledge, would she be knowledgeable about
02:08:20 4 sales of flavors by Crompton & Knowles to Philip
02:08:20 5 Morris?

02:08:22 6 MR. NUNLEY: Objection. Calls for
02:08:24 7 speculation. No foundation for the question.

02:08:30 8 A. It would be a guess, but if I had to
02:08:32 9 guess, I would say she does, yes.

02:08:38 10 Q. Looking to the second page of this
02:08:48 11 document, PC 203955, in the middle of the page
02:08:48 12 there is an entry for ethyl alcohol.

02:08:50 13 A. Yes.

02:08:52 14 Q. Can you tell by looking at this list
02:08:56 15 whether that's ethyl alcohol denatured with
02:08:56 16 nicotine?

02:09:04 17 A. I would assume the way that that is
02:09:08 18 disclosed, it would not contain SDA-4 alcohol.

02:09:08 19 Q. And what leads you to that
02:09:10 20 conclusion?

02:09:10 21 A. Because it's not mentioned on the
02:09:12 22 disclosure. I mean, there is no reference to
02:09:14 23 denatured alcohol.

02:09:18 24 Q. But it could be denatured alcohol,
02:09:22 25 you're not sure?

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A. Again, I would assume it is not denatured with -- I mean, is not SDA-4 alcohol. That would be my assumption based on this disclosure.

Q. On PC 203956, the third page, there is a list of PM flavors. What's your understanding about this list of flavors?

A. That the disclosure above or the list of ingredients above would be the list of ingredients that would include the flavors listed. In other words, these are the ingredients in those flavors as a composite list.

Q. To your knowledge, do any of those flavors contain tobacco extract?

A. Not to my knowledge.

Q. Do you see the redactions further down the page?

A. Yes.

Q. Were you involved in redacting this document?

A. I don't know if I was involved in redacting this exact document. I could have been. There was more than just myself involved in redacting these documents.

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02:10:38 2 Q. Who else was involved in redacting
02:10:44 3 the documents, apart from counsel?

02:10:50 4 A. As I recall, it was Debbie Ayers, Ola
02:11:08 5 Gaines, George Patskan, and Rick Solana.

02:11:10 6 Q. Do you have any idea what type of
02:11:12 7 information has been redacted from this
02:11:12 8 document?

02:11:14 9 MR. NUNLEY: Can I just ask one
02:11:18 10 thing? Do you mean, were there other people
02:11:18 11 involved in physically doing the redactions?
02:11:24 12 Were the people you mentioned those that made
02:11:24 13 decisions on redacting?

02:11:26 14 THE WITNESS: No, as far as decision
02:11:26 15 making, that would have been me, based on
02:11:30 16 information that I had on which flavors were used
02:11:32 17 domestically and which flavors were used
02:11:34 18 overseas.

02:11:38 19 Q. Do you have any idea what type of
02:11:40 20 information is redacted on this page?

02:11:42 21 A. Without seeing the original document,
02:11:44 22 I can't remember. But I would assume that this
02:11:46 23 has to do with export flavors.

02:12:10 24 Q. As part of the redaction effort, did
02:12:20 25 you create a list of DM codes that you believed

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were only used in cigarettes manufactured and
sold in the United States?

MR. NUNLEY: I would object. I think
that would inquire into work product.

MR. DUNNE: I'm asking whether he
made a list.

MR. NUNLEY: If he did it at the
direction of attorneys -- you can ask him if he
made a list. I don't think I can allow you to
inquire what would be on the list.

MR. DUNNE: I'm just asking if he
made a list.

A. I think we carried out the redaction
process based on the information supplied by
technical services, which would have the formula
information, and based on the redacted DM code
book.

Q. And did you make a list of DM codes?

A. I may have. I may have. But I don't
recall.

Q. You mentioned four other people
worked on the redactions; is that correct?

A. That's correct.

Q. How would they have known what

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information to redact?

A. Most likely -- there probably was
some sort of a list generated for us to follow as
we were doing our redactions.

Q. But you personally did not generate
such a list?

A. I don't recall personally generating
one. But I can't say for sure.

MR. NUNLEY: Steve, just so the
record is clear, you've referred to the redacting
process. I want you to understand that David was
involved in a portion of the documents that were
produced in redacted form. There were
significant numbers of other people involved, for
example, in the primary brand formulas.

I don't want his testimony to suggest
there were four people involved in the entire
process.

A. I would like to say a little bit
more. In redacting the documents that are housed
in our area, those are the people that I remember
involved with the redaction process. But I also
helped in the general redacting process which
went into the primary formulas, et cetera,

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et cetera, where there were a lot more people
involved.

In fact, it involved a number of
people in flavor -- primarily from flavor
technology.

Q. Which people from flavor technology
were involved in that?

A. I would never be able to remember
them all. I remember Greg Nixon, Mary Beth
Lambert, Ron Hatcher. I'm not going to list any
more. But a number of people.

MR. DUNNE: I'll ask the reporter to
mark as Defendants Williams Number 33, ABC
document number PC 203988 through 994, Philip
Morris document number 2031459236 through 9242.

(Williams Exhibit 33 for
identification, Crompton & Knowles Corporation
1/20/92 list X ingredients by FEMA number.)

Q. Could you describe this document for
me.

A. This appears to be several -- let me
double-check. Several quantitative disclosures
from Crompton & Knowles.

Q. Did Crompton & Knowles send these

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02:16:48 2 disclosures to you?

02:16:48 3 MR. NUNLEY: You mean did they
02:16:50 4 personally?

02:16:50 5 MR. DUNNE: Did they personally.

02:16:54 6 A. Yes. Based on my stamp, I received
02:16:56 7 these documents.

02:16:58 8 Q. And when did you receive them?

02:17:02 9 A. Apparently in January of 1993.

02:17:04 10 Q. Directing your attention to PC
02:17:18 11 203992, this appears to be a list of ingredients
02:17:26 12 for tobacco flavor 3148, DM number 14070 A; is
13 that correct?

02:17:26 14 A. That's correct.

02:17:28 15 Q. About two-thirds of the way down the
02:17:30 16 list there's an entry for tobacco absolute, and
02:17:36 17 then next to it, 0.1 followed by five zeros.

02:17:38 18 A. Yes.

02:17:40 19 Q. What's your understanding of that
02:17:40 20 entry?

02:17:44 21 A. It's my understanding, I believe in
02:17:46 22 subsequent conversation, and I'm not sure who it
02:17:50 23 was with at Crompton & Knowles, it might have
02:17:52 24 been Debbie Kennison and it might have been
0 17:56 25 someone else, that what they really meant in this

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particular case was not a tobacco absolute, but
denatured alcohol.

Q. But I'm asking a different question.
Based on this document, what's your understanding
of that entry in this document?

MR. NUNLEY: I think he just -- how
does what he just told you differ from his
understanding?

MR. DUNNE: I would like to know what
the 0.1 refers to.

A. It would refer to tobacco absolute,
based on the face of this document.

Q. So based on the face of this
document, flavor DM number 04170 A would contain
0.1 percent tobacco absolute; is that correct?

MR. NUNLEY: I think that
mischaracterizes his testimony because it ignores
what he has told you --

MR. DUNNE: I asked based on the face
of this document.

A. Based --

MR. NUNLEY: Excuse me, David. I
would object because "based on the face of the
document" ignores reality.

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02:19:00 2 MR. DUNNE: I'm trying to understand
02:19:00 3 a document that the witness has testified he
02:19:04 4 received. I'm trying to understand what he would
02:19:06 5 have understood when he first received it before
02:19:12 6 any subsequent conversations and what he would
02:19:12 7 have understood from the face of the document.

02:19:14 8 So based on the face of the
02:19:20 9 document -- let me repeat my last question.

02:19:22 10 Q. So based on the face of this
02:19:26 11 document, flavor DM number 04170 A would contain
02:19:28 12 0.1 percent tobacco absolute; is that correct?

02:19:30 13 MR. NUNLEY: Objection. It
02:19:32 14 ignores -- the question ignores the witness's
02:19:34 15 testimony about the document. You can answer.

02:19:36 16 A. Based on the face of the document,
02:19:40 17 you would assume it would contain 0.1 percent of
02:19:42 18 a tobacco absolute.

02:19:44 19 Q. And tobacco absolute contains
02:19:46 20 nicotine; is that correct?

02:19:48 21 A. I don't know that.

02:19:50 22 Q. Is tobacco absolute a form of tobacco
02:19:50 23 extract?

02:19:58 24 A. Again, I get confused on terminology,
02:00 25 but you would assume that it comes from tobacco.

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I don't know if it's a tobacco extract or not.

Q. Do you have an understanding as to what else it might be if it's not a tobacco extract?

MR. NUNLEY: Objection. Calls for speculation.

A. I really don't.

MR. DUNNE: We'll take a break.

THE VIDEO OPERATOR: It is 2:20. This is the end of tape number 5 of the deposition of David Williams. We are off the record.

(A recess was taken.)

THE VIDEO OPERATOR: Today is August 1st, 1995. This is the beginning of tape 6 of the deposition of David Williams. It is 2:33. We are on the record.

Q. Referring back to the questions just before the break and Defendants Williams Exhibit 33, you testified that subsequent to receiving this ingredient disclosure you had a conversation with someone at Crompton & Knowles that had they meant -- what they really meant in this particular case was not a tobacco absolute but

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denatured alcohol.

Could you explain that answer to me?

A. What I mean there is that based on that disclosure, there had been no previous indication, based on the disclosures we had received on this particular flavor through time that this particular flavor contained anything called a tobacco absolute.

So based on my memory, I would have most likely called someone at Crompton & Knowles to check on this information, and I believe they indicated to me that we, Philip Morris, never used this flavor containing a tobacco absolute, that it may have contained denatured alcohol.

And that's to the best of my recollection.

Q. You just said that Philip Morris never used this flavor containing a tobacco absolute?

A. Based on what Crompton & Knowles indicated to me, They indicated that the flavor -- I forgot -- oh, 04-170, which they supplied to Philip Morris, did not contain a tobacco absolute, but contained denatured alcohol

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02:35:28 2 instead.

02:35:34 3 Q. So you received this form and
02:35:38 4 "tobacco absolute" caught your eye; is that
5 correct?

02:35:40 6 A. I don't know when it caught my eye,
02:35:42 7 but at some time it caught me eye.

02:35:44 8 Q. And why did "tobacco absolute" catch
02:35:46 9 your eye?

02:35:50 10 A. Because as I said previously, the
02:35:52 11 disclosures we had received from Crompton &
02:35:54 12 Knowles up to then had never included tobacco
0 35:56 13 absolute, that I could recall.

02:35:58 14 Q. Had the disclosures included all the
02:36:00 15 other ingredients listed here?

02:36:02 16 A. Yes, I believe they had.

02:36:06 17 Q. Was Philip Morris using DM number
02:36:10 18 04170 A at the time that you received this
02:36:12 19 disclosure?

02:36:14 20 A. To the best of my recollection, no.

02:36:16 21 Q. Philip Morris was not using that
02:36:18 22 flavor?

02:36:18 23 A. No.

02:36:20 24 Q. And that was based on something
0 36:22 25 Crompton & Knowles told you?

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02:36:28 2 A. No. Again, basing on memory, there's
02:36:30 3 a lot of flavors swimming through my head right
02:36:32 4 now, but based on what I remember, during this
02:36:36 5 time period, Philip Morris --

02:36:38 6 MR. NUNLEY: You probably should say
02:36:40 7 what time period you're referring to.

02:36:44 8 A. Okay. I'm sorry. If I can read
02:36:50 9 these days. Sometime in 1992, looks like toward
02:36:54 10 the end of 1992, Philip Morris was trying to
02:36:58 11 obtain quantitative formula information on
02:37:00 12 formulas that we did not already have
37:04 13 quantitative information on, for historical
02:37:06 14 purposes.

02:37:10 15 It's my guess that this particular
02:37:14 16 flavor, 04-170, was not in use at this time.

02:37:14 17 Q. But it was a flavor that Philip
02:37:18 18 Morris had used in the past?

02:37:20 19 A. Yes. We had used 04-170 in the
02:37:20 20 past.

02:37:24 21 Q. And do you actually recall a
02:37:26 22 conversation with someone at Crompton & Knowles
02:37:28 23 on this topic?

02:37:32 24 A. Vaguely. I just cannot remember it
37:34 25 for sure. I seem to think it was with someone at

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Crompton & Knowles. I only hesitate because I
may have had the conversation with Frank Daylor,
who would have had the conversation with someone
at Crompton & Knowles. And that's why I'm having
trouble remembering it.

I don't remember the exact
conversation.

Q. Do you remember whether Crompton &
Knowles explained why ethyl alcohol appears on
this list?

A. Based on this disclosure I wouldn't
have asked that question, because we received
ethyl alcohol disclosures before from Crompton &
Knowles.

Q. So to the best of your knowledge,
this ingredient disclosure for this formula is
incorrect; is that right?

A. Based on the appearance of tobacco
absolute, I would say that that's -- that part is
an inaccurate disclosure.

Q. Did you ask Crompton & Knowles to
send you an accurate disclosure for this flavor?

A. Unfortunately not. Apparently not.
I did not find one in the records.

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02:38:50 2 Q. Are you familiar with this Madis
02:38:50 3 Laboratories?

02:38:54 4 A. I am familiar with Madis Laboratories
02:38:56 5 in the sense that I know -- I think we
02:38:58 6 purchase -- I know we purchase some flavors from
02:39:06 7 Madis Laboratories, and -- but only in that
02:39:06 8 sense.

02:39:08 9 Our area is primarily -- although
02:39:10 10 we're responsible for all the ingredients that we
02:39:14 11 add to tobacco, our primary contacts are with
02:39:18 12 vendors at that sell us compounded flavors, and
02:39:20 13 Madis did not fall under that category.

02:39:22 14 Q. Does Madis sell extracts to Philip
02:39:22 15 Morris?

02:39:28 16 A. I believe they may have, yes. I
02:39:28 17 don't recall which ones in particular.

02:39:30 18 Q. Do you know whether they sell tobacco
02:39:32 19 extract to Philip Morris?

02:39:34 20 A. To the best of my knowledge, they've
02:39:36 21 never sold tobacco extract to Philip Morris.

02:39:42 22 Q. Could you tell me who Thomas Gannon
02:39:44 23 is?

02:39:50 24 A. Thomas Gannon was a former director,
02:39:52 25 I don't even know what -- director of what

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department, that was at Philip Morris when I
first came to Philip Morris, and I'm not sure how
long he was at Philip Morris after I arrived, but
it didn't seem to be that long.

I remember him being at Philip Morris
back in the very early 1980s, maybe. That's all
I remember about Thomas Gannon.

Q. Do you know whether he was involved
in purchasing flavors or extracts from outside
vendors?

A. I have no idea.

Q. Do you know who Steve Skalak is,
S-k-a-l-a-k?

A. Steve Skalak is a flavorist in flavor
technology.

Q. Is he involved in buying extracts or
flavors from outside vendors?

A. Since he works in flavor technology,
his primary role, as I understand it, would be to
make flavors. There would be occasion where
maybe he would want to receive flavors to look at
as potential flavors, you know, in working --
doing his normal work.

So it could be -- the answer could be

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yes, but again, that's speculation.

Q. Do you know who Howard Maxwell is?

A. He's a member of flavor technology.

Q. And do you know what position
Dr. Richard Cox held in June of 1992?

A. June of 1992? He was either a
manager of flavor technology or a fellow in the
position he's in now. I can't recall for sure.

Q. Do you know any reason why Philip
Morris would have told Madis Laboratories in June
of 1992 that they were interested in tobacco
extracts?

A. In June of 1992? I have no idea.

Q. In June of 1992, if Philip Morris
bought a tobacco extract containing nicotine,
would it have had to label it with a poison
label?

MR. NUNLEY: Objection. I don't know
if that question can be answered given the
information that's provided.

Q. You may answer, if you can.

A. I have no idea.

Q. Are you familiar with Meer
Corporation?

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02:42:34 2 A. Again, Meer falls into that category
02:42:36 3 of vendors that we don't receive compound flavor
02:42:40 4 information from. I'm aware of Meer, yes.

02:42:52 5 MR. DUNNE: Let me ask the reporter
02:42:58 6 to mark as an exhibit Defendants Williams Number
02:43:10 7 34, this is ABC Bates range IC 100001 through
02:45:00 8 100018.

9 (Williams Exhibit 34 for
10 identification, set of documents, Meer
11 Corporation.)

12 MR. DUNNE: This is a set of
13 documents produced to us by Meer Corporation.

14 Q. Let me direct your attention to page
15 IC 100008.

16 A. There's no production numbers.

17 Q. There aren't production numbers on
18 yours? I'm sorry, I was looking at the wrong
19 one. This has previously been introduced as
20 Plaintiffs' Exhibit 253-B.

21 Let me direct your attention to the
22 third page, then, third page of the exhibit.
23 Have you seen this type of form before?

24 MR. NUNLEY: Objection as to the
25 form. How do you mean, Steve, this type of

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form?

MR. DUNNE: This type of document
before.

MR. NUNLEY: You mean from Meer
Corporation?

MR. DUNNE: The document on the third
page that was produced by Meer.

A. To the best of my knowledge I have
never seen this document or even one like it.

Q. Let's skip ahead four pages to the
page that at the top says, "Name, Tom Maloney,
date, 9/15." It says "Meer Corporation" above
that.

A. Okay.

Q. This document under the paragraph
"Report" says, "Introduction and presentation on
various botanical and tobacco extracts along with
special flavor blends." And you'll see the
customer listed farther above is R&D group.

Do you have any knowledge about
presentation of tobacco extracts to the R&D group
by Meer Corporation?

A. I have no knowledge of this
whatsoever.

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Q. The last sentence of this paragraph says, "Materials for production must have qualitative analysis and listing of all ingredients presented to David Williams at PM."

Do you see that sentence?

A. Yes, I do.

Q. Did anyone ever talk to you about Meer Corporation providing you with qualitative analysis of Meer Corporation's products?

A. Well, first of all, I would not need -- for our group we would not need qualitative analysis. What we would need is to be aware of the ingredients that Philip Morris uses on the products.

Probably this reference, although I've never seen it, probably this reference is -- if there was any indication or any idea that a flavor of any sort was going to be used, and it actually ended up on a product, I would have to be aware of it. They would have to make sure I was aware of it.

That's the only thing that I can -- I'll surmise that's probably what it is, but I'm not sure.

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Q. Turn to the next page.

(Witness complies.)

Q. At the top it says, "Call report, salesman, Tom Maloney." Farther down it says, "Talk to Steve Skalak," I think you said his name is, "Title, research scientist, data call 10/25."

The last sentence on the page says, "Steve tells me that Philip Morris cannot use the S.E. Burley, Oriental, or Virginia tobacco due to nicotine content, nor can they use any other flavoring materials that consist of nicotine."

Do you know of any reason why on October 25th, 1993, Philip Morris would have told Meer Corporation that it could not use any materials that consist of nicotine?

MR. NUNLEY: I would say, Steve, that probably slightly misstates what the comments are. I don't know that Philip Morris spoke in a corporate capacity. I think Steve Skalak spoke to Meer Corp.

So I think the question ought to be, is there any reason why Steve Skalak would tell

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Tom Maloney that.

MR. DUNNE: According to this it says, "Steve tells me that Philip Morris cannot use the S.E. Burley, Oriental or Virginia tobacco due to nicotine content." That's the basis of my question.

MR. NUNLEY: Right. But it's clear Steve is telling him that.

Q. Should I repeat the question?

A. I don't think you need to repeat it. I don't know what he's referring to here. Apparently maybe he's looking at several flavors from Meer Corporation as potential products, but apparently he's made a statement here that for some reason he can't use these particular flavors.

Again, it would be speculation on my part. I haven't seen these documents.

Q. According to this he also says, "Nor can they use any other flavoring materials that consist of nicotine." Was there any general Philip Morris policy that you're aware of as of October 1993 that Philip Morris would not use any flavoring materials consisting of nicotine?

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02:49:52 2 A. There's not one that I'm aware of at
02:49:54 3 this particular time. One way or the other, I've
02:49:56 4 never heard such a policy.

02:50:22 5 MR. DUNNE: I'll ask the reporter to
02:50:30 6 mark as Defendants Williams Number 34 a set of
02:50:36 7 documents that were produced to us, I believe in
02:50:40 8 this form, binder clipped or otherwise attached
02:50:48 9 together, beginning with ABC number PB 170326
02:50:54 10 through 362, Philip Morris number 2031286394
02:50:58 11 through 6549.

12 (Williams Exhibit 35 for
51:02 13 identification, set of documents, "Nicotine".)

02:52:36 14 MR. DUNNE: To make clear on the
02:52:40 15 record, we've marked the last exhibit as
02:52:48 16 Defendants Williams Number 35, that is, the
02:52:56 17 documents with Bates range PB 170326 through 362,
02:53:02 18 Philip Morris numbers 2031286394 through 6549.

02:53:46 19 Q. Do you recognize the first page of
02:53:46 20 this document?

02:53:48 21 A. I remember this document being in a
02:53:52 22 file in our area, yes. I think it must be --
02:53:54 23 although I'm not quite sure, it may be the folder
02:53:56 24 that's holding the documents.

53:58 25 Q. Is this your handwriting on PB

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170326?

A. No, it's not.

Q. Do you know whose handwriting it is?

A. This is Frank Daylor's handwriting.

Q. Does this indicate that your group had a file labeled "Nicotine"?

A. This indicates to me that Frank Daylor at this particular time had a file labeled "Nicotine," and once he left the file was inherited into our area, yes.

Q. So that's why it would have been produced as coming from your files?

A. Yes.

Q. Is that correct?

A. Because his files were incorporated into my files.

Q. Directing your attention to PB 170327, it appears to be -- 327, 328 appear to be two pages of notes dated 30 March '89; is that correct?

A. The first page is dated 30 March '89, yes.

Q. Do you know whose handwriting this is?

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02:55:12 2 A. This again appears to be Frank
02:55:14 3 Daylor's handwriting.

02:55:14 4 Q. Have you ever seen this document
02:55:18 5 before, these two pages?

02:55:22 6 A. The first time I remember seeing this
02:55:26 7 document was in the process of pulling files
02:55:28 8 together for this case.

02:55:28 9 Q. And when was that?

02:55:40 10 A. I would say maybe four or five months
02:55:40 11 ago, three or four months ago.

02:55:42 12 Q. And when is the most recent time
02:55:44 13 you've seen this document?

02:55:54 14 A. I cannot recall whether I have seen
02:55:56 15 that document since that time or not for sure.

02:56:00 16 Q. Were you involved in redacting this
02:56:00 17 document?

02:56:04 18 A. These types of documents I would have
02:56:08 19 been involved with redacting, yes, either I would
02:56:10 20 have redacted it or someone in our area would
02:56:12 21 have redacted it.

02:56:12 22 Q. But you don't recall whether you
02:56:14 23 specifically redacted this document?

02:56:16 24 A. At this time I don't.

02:56:22 25 Q. Starting after the date, it appears

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to say, "Nicotine flavors with tobacco extracts,
EEP Joe Tenhet and Tom Rother," perhaps it's Jim,
"Comment that it is" -- there's a word I can't
read, perhaps "not a class B poison per
definition in our experience."

Does this bring to mind any
conversations that you have had on this topic?

A. It does not bring together any
conversations I have had on this topic.

Q. Do you know what "EEP Joe Tenhet"
refers to?

A. I'm not sure exactly what EEP refers
to. It refers to an environmental area, I
think.

Q. Do you know who Tom Rather or Rother
or Jim Rather would be?

A. I think his name is Tom Rother. I
don't ever recall speaking with him. I've heard
his name mentioned in this area.

Q. The next lines appear to read, "Nine
direct materials contain tobacco extract.
Nicotine levels as follows." The first one
listed is 04-209. And then it appears to say
"Weight over weight percent," or "WT over WT

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percent, 0.134."

Does this indicate to you that DM
code 04-209 contains 0.134 percent weight over
weight nicotine?

A. It's not my document. It would be
speculation on my part. It could mean that,
yes.

Q. Do you know independent of this
document whether 04-209 contains 0.134 percent
nicotine?

A. No, I don't.

Q. There's a reference to nine direct
materials. But then it appears that all the rest
of the list is redacted; is that correct?

MR. NUNLEY: It's up above, David.

A. I'm sorry.

Q. Above the redactions it says, "Nine
direct materials contain tobacco extract,
nicotine levels as follows."

A. Oh, okay. Okay.

Q. There's one DM code, then the rest
appears to be redacted; is that correct?

A. Yes.

Q. Do you see anywhere unredacted

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02:59:10 2 04-424?

02:59:12 3 A. No, I don't.

02:59:16 4 Q. Do you have any reason to believe
02:59:22 5 that 04-424 would not be on this list of direct
02:59:24 6 materials that contain tobacco extracts?

02:59:28 7 A. Yes, because at this particular time,
02:59:32 8 04-424 didn't exist. We were obviously using
02:59:36 9 04-209.

02:59:36 10 MR. NUNLEY: Excuse me. When you say
02:59:38 11 "this particular time," what are you referring
02:59:38 12 to?

59:40 13 THE WITNESS: I'm talking about the
02:59:44 14 time of this document, March 30, 1989.

02:59:48 15 Q. Do you have an understanding about
02:59:52 16 why the rest of this list would be redacted?

02:59:54 17 A. My understanding would be that any of
02:59:58 18 the other flavors that would be on this list
03:00:00 19 would be involved with export flavors, or
03:00:02 20 cigarettes that are used -- that are sold
03:00:02 21 overseas.

03:00:04 22 Q. Even though they might be
03:00:06 23 manufactured in the United States?

03:00:06 24 A. That's correct.

00:10 25 Q. Below that list it says, "These go

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into many items shipped from flavor center,
including 75-PM preblend." Can you tell me what
the 75-PM preblend refers to?

MR. NUNLEY: Steve, I would only
object from the standpoint of your interpretation
of the third word in that line. I don't know
whether it's as you read it or not. To me it's
difficult to read.

MR. DUNNE: You're referring to
"many"?

MR. NUNLEY: To me it looks like it
could be m-a-y.

MR. DUNNE: Could be "may," I agree.

Q. The question was, can you tell me
what the 75-PM preblend refers to.

A. A 75 preblend I believe normally
refers to flavor concentrates that are prepared
by Philip Morris and then sent overseas.

Q. So would it be a 75, dash, and then
three more numbers, in other words, is 75 the
beginning of a DM code for a flavor sent
overseas?

A. There probably would be three more
numbers, you're correct in that assumption. A 75

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code would be a situation where the flavor center
would take a certain number of DM codes or direct
materials, combine them in a certain flavor
formulation, which I suppose had been developed
at Philip Morris over time, and that combination
of flavors would then be shipped overseas for
use.

Q. Is that similar to a DM code that
begins 70 dash?

MR. NUNLEY: Objection as to form.
How do you mean, "similar"?

MR. DUNNE: I'll just ask the
witness.

Q. DM codes that begin with 70 and then
dash and three numbers, do you have an
understanding as to what the 70 indicates?

A. Yes. These are different in the
following sense. The 75 codes are codes which
refer to flavors which are put together by Philip
Morris from direct materials they receive.

So, for instance, if they combine
benzaldehyde and whatever, three or four
different flavors, and then their intention is to
send that overseas, they would give that

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combination a 75 code. And it's a preblend,
that's what it's called. And they would send
that overseas for use.

The 70 you referred to is a direct
material purchased from a vendor, and it would be
on the DM code book. These 75 codes would not
appear in the DM code book.

Q. Could you explain the meaning of
codes that begin 04?

A. Most of the codes that begin 04 are
compounded flavors.

Q. And then codes that begin 03?

A. Codes that begin 03 are normally --
maybe in all -- I shouldn't say -- never say "in
all cases," but are normally aroma chemicals such
as a benzaldehyde or -- let's see if I can think
of another example. I've drawn a blank right
now.

Let's see. Salicylaldehyde, which is
another chemical. They're basically aroma
chemicals which have a flavor impact. Single
items.

Q. Can you explain to me DM codes that
begin 02?

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03:04:32 2 A. If I remember correctly, the 02 codes
03:04:38 3 refer to primarily casing type materials, meaning
03:04:44 4 materials that are used which are not volatile,
03:04:50 5 that are used as humectants -- no, not
03:04:52 6 humectants. That's not true. Sugars, for
03:04:58 7 instance. Sugars is an example, or cocoa is an
03:04:58 8 example.

03:05:00 9 Q. Can you explain to me DM codes that
03:05:06 10 begin with 01?

03:05:08 11 A. 01s are codes -- are compounds such
03:05:10 12 as essential oils, botanicals, that type of
03:05:10 13 compound.

03:05:12 14 Q. Botanical extracts?

03:05:12 15 A. Botanical extracts.

03:05:18 16 Q. Are there DM codes that begin 00?

03:05:22 17 A. We're sort of getting out of my
03:05:24 18 familiarity, but there are compounds that begin
03:05:26 19 00. I believe those are referred to as brand
03:05:32 20 codes, meaning the code given to a particular
03:05:34 21 brand. It would identify that particular brand.

03:05:38 22 Q. So 00 codes don't identify flavors or
03:05:38 23 extracts of any sort?

03:05:44 24 A. Not to my knowledge.

03:05:52 25 Q. Turning to PB 170328, it appears to

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say, "Limited data shows shipment range from,"
and then it appears there's a number crossed out,
"percent." That's "0.00085 percent, in,"
there's a redaction, "to," there's a redaction,
with below it, "point 01 percent in several."

Do you have any understanding what
this refers to?

MR. NUNLEY: If the witness has ever
discussed with the author or has any knowledge,
that's one thing. Otherwise it seems to me
you're really asking him to speculate.

MR. DUNNE: It's a document produced
from his files. I'm asking him to interpret it
for us.

MR. NUNLEY: And he told you it's a
document that he didn't write, that in essence
came in his files when his predecessor retired.

MR. DUNNE: I understand. I'm just
asking if he has any understanding to help
explain what this is a reference to.

MR. NUNLEY: Well, all I would like
to make clear is that, as I understand, what
you're asking him to do is to interpret what
appears on the face of the document.

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MR. DUNNE: Together with any knowledge he has.

MR. NUNLEY: Well, I think -- I'm going to object unless there's some foundation that he has other knowledge relevant to this document.

Q. Have you ever spoken to anyone at Philip Morris about tobacco extracts in nicotine?

A. About tobacco extracts and nicotine?

Q. Yes.

A. I'm sorry, say that again. At Philip Morris?

Q. Yes.

A. I'm sure I have.

Q. Have you ever spoken with Mr. Daylor about tobacco extracts?

A. I'm sure that I have, at some time in the past.

Q. Do you have any understanding as to what it means when it says "Limited data shows shipment range from 0.00085 percent in," redaction, "to," redaction, with "0.01 percent" below, "in several"?

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03:08:16 2 A. That would be a speculation on my
03:08:20 3 part. I'm not sure. I would hate to guess.

03:08:20 4 Q. You have no understanding
03:08:22 5 whatsoever?

03:08:44 6 A. I'm not sure. I'm not sure.

03:08:48 7 Q. The next paragraph, the next line
03:08:52 8 appears to say, "Richard feels that 0.1 milligram
03:09:00 9 per milliliter," or "mg/ml," "is a poison." Have
03:09:02 10 you ever heard anyone at Philip Morris say that
03:09:06 11 0.1 milligrams per milliliter of nicotine is a
03:09:08 12 poison?

03:09:10 13 A. I've never heard that stated, no.

03:09:14 14 Q. Next it appears to say, "Therefore
03:09:18 15 for our limited data, says we need labels,
03:09:22 16 therefore," I can't read the next word, "from the
03:09:26 17 bridge or basement window." Do you have idea
03:09:28 18 what that refers to?

03:09:32 19 A. I think it looks like the word
03:09:44 20 "jump." I think I indicated that Frank Daylor
03:09:48 21 may have written -- most likely wrote this
03:09:52 22 document, and Richard refers to, I'm sure he must
03:09:56 23 be referring to Richard Carchman. But I have no
03:10:00 24 idea why he's telling him to jump off -- out of a
03:10:00 25 window.

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03:10:08 2 Q. After that it says, "More data," and
03:10:14 3 then it appears to say, "McAdams's opinion." Do
03:10:18 4 you know what McAdams refers to?

03:10:18 5 A. I have no idea.

03:10:20 6 Q. Is there anyone at Philip Morris that
03:10:22 7 you know named McAdams?

03:10:24 8 A. No, I don't know of anyone by that
03:10:26 9 name.

03:10:30 10 Q. Turning to the next page, PB 170329,
03:10:34 11 have you seen this page before?

03:10:38 12 A. In relationship to this package, yes,
(10:42 13 I have. This, the document disclosure.

03:10:46 14 Q. Do you have any understanding as to
03:10:50 15 what this document, what the information
03:10:52 16 contained in this document represents?

03:10:56 17 A. It appears it's referring to the
03:11:02 18 direct material 04-209, and the fact that the
03:11:10 19 04-209 is subsequently used in 75211, which is a
03:11:12 20 preblend.

03:11:16 21 Q. And is that preblend then used in
03:11:20 22 something coded 00044 and 00045?

03:11:26 23 A. That would be -- based on the way
03:11:30 24 this looks, that's what I would conclude.

(11:34 25 Q. Do you know what 00044 or 45 refers

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to?

A. I can guess that it would be maybe
the codes for -- and again, this is a guess --
the codes for Merit Menthol and Merit Ultra Light
Menthol.

Q. You said DM codes starting with 75
were sent overseas; is that correct?

A. I thought they were. I guess I'm
mistaken about that, in all cases.

Q. About halfway down on the left hand
side, under the column "Last ordered," it says,
"Current," and next to that, under "Country used
in," it says, "U.S.A. " Do you see that?

A. Yes.

Q. Then the next line to that, it
appears to say "Current," and then quotation
marks next to it, and the line next to that,
there's a line under "Current" and then quotation
marks again, under "U.S.A."

Do you see that?

A. Oh, yes, I see that.

Q. Does this indicate to you that this
ingredient was used in the United States of
America?

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03:12:58 2 MR. NUNLEY: How do you mean, "used,"
03:13:00 3 Steve? You mean in product manufactured and sold
03:13:04 4 in the States, or used, period, whether it went
03:13:04 5 into the States or outside the States?

03:13:06 6 MR. DUNNE: I'll ask the witness's
03:13:06 7 understanding.

03:13:10 8 Q. What's your understanding of what
03:13:10 9 this document shows?

03:13:20 10 A. It could be that if this is a
03:13:24 11 listing -- you can't tell what this is a listing
03:13:32 12 of, because the flavor itself is redacted,
13:38 13 meaning that the -- again, I'm talking about up
03:13:40 14 above where it says "Last ordered country used
03:13:44 15 in," there's a redaction, and based on the
03:13:46 16 chronology of things you would think that that
03:13:50 17 would be a DM code listed there.

03:13:54 18 And if I had to speculate, it would
03:14:00 19 be that the -- all of the following flavors or
03:14:06 20 all of the following -- what am I trying to say?
03:14:10 21 All of the following 75 codes that are used in
03:14:12 22 this particular DM code were used outside the
03:14:16 23 U.S.A.

03:14:20 24 Where it says "Current U.S.A.," it
14:22 25 probably refers to cigarettes that were made in

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the U.S.A., but then subsequently shipped
overseas.

Q. Probably, but you're not sure from
looking at this document?

A. Not looking at the redacted version.

Q. Were you involved in redacting this
document?

A. This particular document?

Q. Yes.

A. I can't recall if I was involved in
redacting this particular document, but I
probably was.

Q. And you believe that the redactions
to the right would be DM codes?

A. I can't say that for sure without
looking back at the document. It might be -- I
mean, it might be blend codes or it might be
preblend codes or it might be DM codes. I'm not
sure without looking.

Q. Let me direct your attention,
beginning at PB 170331, can you describe the
following set of documents, through PB 170341?

A. It looks like some sort of
information that would have been derived from

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source information, like from the literature or
from news clips or something like that.

Q. Was this a source -- a search that
you requested?

A. No.

Q. Have you looked at any of these
documents before?

A. I only remember these documents in
reference to the -- turning the information over
on the ABC case. I have not looked at these
before that.

Q. On PB 170340 --

A. I'm sorry.

Q. PB 170340. There is a description
which begins, "Tobacco is extracted by alcohol
vapors in closed circuit," and at the end of the
paragraph it says, "Cigarette paper when
impregnated with this extract has a better taste
provided that the soluted substances fixed by
paper be higher than 0.005 percent and lower than
0.007 percent."

Have you ever heard whether Philip
Morris has impregnated cigarette paper with
tobacco extract?

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03:18:06 2 A. I have never heard that they did
03:18:10 3 impregnate paper with tobacco extract.

03:18:12 4 MR. NUNLEY: Just, Steve, so the
03:18:14 5 record is clear, because you described the
03:18:20 6 document but not all of it, 170340 indicates that
03:18:24 7 it's "Headline: Cigarette paper-tobacco 1957
03:18:30 8 Coresta." I don't think it indicates it's a
03:18:32 9 Philip Morris origin document.

03:18:34 10 MR. DUNNE: I agree.

03:18:44 11 Q. On the next page, PB 170341, if you
03:18:48 12 could read that page.

03:18:48 13 A. Out loud?

03:18:50 14 Q. No.

03:18:50 15 (Witness complies.)

03:19:34 16 A. Okay.

03:19:36 17 Q. This describes a patent assigned to
03:19:38 18 Philip Morris for a process involving contacting
03:19:42 19 the tobacco plant parts with water to obtain an
03:19:46 20 aqueous tobacco extract, treating the extract to
03:19:48 21 adjust its content of certain metallic ions
03:19:52 22 without removing desirable tobacco constituents,
03:19:56 23 and recombining the treated aqueous extract with
03:19:58 24 extracted tobacco parts.

03:19:58 25 Is that correct?

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03:20:06 2 A. That's what it says, yes.

03:20:06 3 Q. Are you aware of this patent?

03:20:08 4 A. I am not aware of this patent.

03:20:08 5 Q. Do you know whether Philip Morris has
03:20:10 6 ever used this process in manufacturing
03:20:10 7 cigarettes?

03:20:16 8 A. I am not aware if they have or not.

03:20:22 9 MR. NUNLEY: Steve, if you're going
03:20:24 10 to a next exhibit, I would like to take a short
03:20:28 11 break. I think we're closing at 4:00 today, so
03:20:30 12 I'm thinking three or four minutes.

03:20:32 13 THE VIDEO OPERATOR: It is 3:20.

03:20:32 14 We're off the record.

03:20:34 15 (A recess was taken.)

03:27:44 16 THE VIDEO OPERATOR: It is 3:27. We
03:27:44 17 are on the record.

03:27:52 18 Q. I believe you testified early
03:27:56 19 yesterday that when you were working as a
03:27:58 20 laboratory scientist, you worked on a study
03:28:02 21 called the cross solubles base web study; is that
22 correct?

03:28:02 23 A. That's correct.

03:28:06 24 Q. Could you describe for me what that
03:28:08 25 study looked at?

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03:28:16 2 A. As I recall, it looked at taking
03:28:22 3 tobacco of various varieties, and I think I
03:28:30 4 recall it being bright tobacco, burley tobacco
03:28:38 5 and Oriental tobacco, putting that through an RL
03:28:42 6 type process, I guess you could say, and then
03:28:50 7 recombining the solubles with the base webs, in
03:28:52 8 all possible combinations.

03:28:54 9 In other words, if you would extract
03:29:02 10 the burley tobacco, you would reapply the soluble
03:29:08 11 portion to burley. You would apply to bright
03:29:10 12 base web and then to Oriental base web.

03:29:12 13 Q. Do you know what CEL stands for?

03:29:16 14 A. I believe that stands for
03:29:18 15 concentrated extract liquor. I think.

03:29:22 16 Q. Did you use CEL as part of this
03:29:22 17 study?

03:29:28 18 A. I believe that was what the soluble
03:29:30 19 portion was referred to.

03:29:34 20 Q. So when you extracted the tobacco,
03:29:36 21 what you were left with was CEL; is that
22 correct?

03:29:38 23 MR. NUNLEY: Well, Steve, you're
03:29:42 24 referring -- "you," I think you need to determine
03:29:46 25 what David's work was on this project.

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03:29:50 2 Q. You testified earlier, you said, "In
03:29:52 3 other words, if you would extract the burley
03:29:56 4 tobacco, you would reapply the soluble portion to
03:30:00 5 burley. You would apply it to bright, base web,
03:30:02 6 and then to Oriental base web."

03:30:08 7 Who were you referring to in that
03:30:12 8 answer when you said -- when you were talking
03:30:14 9 about extracting the burley tobacco?

03:30:16 10 A. I was not referring to myself.
03:30:18 11 Believe me, I couldn't do that. I think this
03:30:22 12 particular process was carried out in the pilot
03:30:28 13 plant at Philip Morris.

03:30:28 14 Q. The extraction process?

03:30:28 15 A. Yes.

03:30:30 16 Q. And which pilot plant are you
03:30:30 17 referring to?

03:30:30 18 A. I didn't know there was more than
03:30:38 19 one. It's the pilot plant associated with -- at
03:30:40 20 the R&D location in Richmond.

03:30:48 21 Q. So the pilot plant would extract from
03:30:50 22 burley, bright, and Oriental, CEL and would send
03:30:52 23 you the CEL; is that correct?

03:30:58 24 A. They would -- let me try that again.
30:58 25 They would send me --

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03:31:00 2 MR. NUNLEY: His question was what
03:31:02 3 did they send you.

03:31:12 4 A. They sent me samples of the various
03:31:14 5 tobaccos that were produced in this process, and
03:31:18 6 they sent me samples of the base webs that were
03:31:24 7 produced in this process, and they sent me
03:31:26 8 samples of the solubles that were produced in
03:31:30 9 this process, so that I received some samples of
03:31:34 10 the finished tobacco products and of the base
03:31:38 11 webs and of the soluble materials.

03:31:42 12 Q. And the solubles are also referred to
03:31:44 13 as CEL; is that correct?

03:31:48 14 A. Thinking hard, I think -- I refer to
03:31:50 15 them as solubles but they may have been referred
03:31:52 16 to as CEL, you're correct. They may have been.

03:31:54 17 Q. And what's your understanding of the
03:31:56 18 RL process?

03:32:02 19 A. My understanding is that -- and
03:32:04 20 again, it's not based on knowledge --

03:32:06 21 MR. NUNLEY: I object as to the form
03:32:10 22 of the question. I think it's overly broad.

03:32:20 23 MR. DUNNE: Earlier, when I asked the
03:32:24 24 witness to describe this study, he talked about
03:32:28 25 taking the bright tobacco, burley tobacco, and

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Oriental tobacco and putting that through an RL
type process. And I'm asking for his
understanding as to what that RL type process
was.

A. As it refers to in this experiment or
as it refers to, as I understand, RL that Philip
Morris uses?

Q. In this experiment.

A. In this experiment, it was just to
obtain various types of combinations of bright,
burley and Oriental tobaccos, base webs, and
soluble materials.

Q. And is it your understanding that the
RL process used in this study was different than
the RL process used in the manufacture?

A. Based on my limited knowledge I think
it is different in that the RL process, I
believe, that's used at Philip Morris is a
continuous process. I'm not sure that what I'm
talking about here was a continuous process,
because they were having to I think remove --
remove solubles and collect the base webs and
then put together all possible combinations.

Q. So you would remove solubles from one

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batch of tobacco, let's say burley, and then add it to the tobacco web or base web of another type of tobacco, let's say Oriental; is that correct?

MR. NUNLEY: Objection as to form. I think there needs to be a foundation laid as to what his participation was in the project, what his knowledge was of the project.

A. I did not do any of the extraction processes. I did not prepare any of the tobaccos, any of the solubles. None of that was prepared by me.

I did receive samples from the process.

Q. And what did you do with those samples?

A. We -- as I recall, analyticals were run on the samples. As I recall, again, I'm not a toxicologist, but I remember that salmonella activity was determined on the various samples.

Q. Now, you said that the process, the RL process in your study was different than the manufacturing process because it was not a continuous process; is that correct?

A. That's the way I understand it.

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Q. And the process you use for this study was not a continuous process because you took solubles from one batch of tobacco, let's say burley, and applied it to the base web obtained from another batch of tobacco, let's say Oriental; is that correct?

MR. NUNLEY: Steve, I object again as to what his knowledge -- he's told you he did analyticals. He didn't do any of the work in the RL pilot plant.

THE WITNESS: It's worse than that. I didn't even do the analyticals.

MR. DUNNE: I'm following up on an answer the witness gave. Let me repeat the question.

Q. The process you used for this study was not a continuous process because you took solubles from one batch of tobacco, for instance burley, and applied it to the base web obtained from another batch of tobacco, for instance Oriental; is that correct?

MR. NUNLEY: Hold it a second. Does that restate an answer that he gave? The answer that I see, Steve, is an answer that's given at

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15:33:28. He says, "I'm not sure that what I'm
talking about here was a continuous process
because they were having to I think remove
solubles and collect the base webs and put
together all possible combinations."

MR. DUNNE: Exactly. I'm trying to
probe that -- clarify that answer.

MR. NUNLEY: Well --

MR. DUNNE: You can instruct if you
wish, but I'm trying --

MR. NUNLEY: It's not a matter of
instructing.

MR. DUNNE: The question stands.

MR. NUNLEY: Well --

MR. DUNNE: I would like to get an
answer to my question.

MR. NUNLEY: But wait a minute. The
question I was objecting to was 15:36:04, which I
don't think accurately reflects his earlier
testimony.

MR. DUNNE: I'm trying to clarify his
earlier testimony. Let me repeat the question.
Let's let the witness answer this question.

MR. NUNLEY: The witness can answer.

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What I was objecting to, Steve, was in your question you stated what he testified. I don't think that's what he testified.

MR. DUNNE: The witness can correct me if I'm wrong.

MR. NUNLEY: No.

MR. DUNNE: My question is --

MR. NUNLEY: Steve, it's not just a matter of the witness correcting you. We all have obligations to restate the testimony. I'm not suggesting you intended to do it wrong. I'm just saying that the restatement was not accurate based on what he testified earlier.

MR. DUNNE: I understand your point. I'm trying to clarify his earlier testimony, so I'm restating it slightly differently and asking whether my restatement is correct.

Q. My question is, the process you used for this study was not a continuous process because you took solubles from one batch of tobacco, for instance burley, and applied it to the base web obtained from another batch of tobacco, for instance Oriental; is that correct?

MR. NUNLEY: Objection as to form.

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A. That's what I said?

Q. I'm asking whether that's correct, whether my restatement is correct.

A. You're going -- I'm sorry, you're going to have to say it one more time.

MR. DUNNE: Could the reporter read back the question.

(Requested portion of record read.)

A. The answer to that is, I wasn't -- I didn't do the process, didn't run the process. I am assuming that they had to collect the base webs, and then reapply these soluble materials to get all possible combinations.

And I don't see how that would be a continuous process, is all that I'm saying.

Q. And why is that not a continuous process? As you're using the word.

A. I guess as I'm using the word, they would stop and collect the base web and then they would apply a soluble to that. You would have so many base webs and so many solubles, you would combine them in all combinations. I can see how they would have to perhaps stop -- again, it's a guess on my part -- stop and then reapply.

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03:39:44 2 Q. So it's not continuous because the
03:39:46 3 solubles aren't immediately reapplied but there's
03:39:48 4 some temporal stop in the process?

03:39:50 5 MR. NUNLEY: Objection. That does
03:39:52 6 misstate his testimony. He's talking about
03:39:54 7 stopping the line, crossing over --

03:39:56 8 MR. DUNNE: I'm trying to clarify
03:39:58 9 what he's talking about.

03:40:00 10 A. I'm talking about something not in my
03:40:02 11 area, is what I'm doing.

03:40:02 12 Q. What are you talking about when you
03:40:04 13 say "stop"?

03:40:06 14 A. I guess what I'm referring to -- and
03:40:08 15 again, I'm guessing that they would have to stop
03:40:10 16 and collect the base webs and then reapply the
03:40:14 17 solubles to these base webs in all the possible
03:40:18 18 combinations, so that you would have a bright
03:40:22 19 base web with each of the solubles applied to it,
03:40:24 20 or Oriental base web with each of those solubles
03:40:28 21 applied to it, and a burley base web with each of
03:40:30 22 those solubles applied to it.

03:40:32 23 Q. Again, what I'm trying to focus on is
03:40:34 24 why is that not a continuous process, as you have
03:40:36 25 used the word.

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03:40:38 2 MR. NUNLEY: I would say objection,
03:40:38 3 asked and answered.

03:40:46 4 A. The fact that you stop, I guess I'm
03:40:50 5 saying, if you stop, you collect a base web, you
03:40:52 6 start again and apply the solubles in various
03:40:54 7 combinations. I would imagine they would have to
03:40:58 8 start and stop several times to do that.

03:41:10 9 Q. You also said early yesterday that
03:41:16 10 when you were working as a laboratory scientist,
03:41:18 11 that you worked on pyrazines; is that correct?

03:41:20 12 A. I remember working on pyrazines --
41:24 13 actually they were acylpyrazines or pyrazines
03:41:30 14 with groups attached, which have oxygens.

03:41:32 15 Q. Are you the inventor of any patents
03:41:34 16 related to pyrazines?

03:41:36 17 A. Yes. Well, along with others.

03:41:38 18 Q. Were you the primary inventor of any
03:41:40 19 of those patents?

03:41:44 20 MR. NUNLEY: Objection. I don't know
03:41:46 21 whether that has a significance -- does it have a
03:41:48 22 significance in the patent area, primary
03:41:52 23 inventor? Or are you using it colloquially?

03:41:54 24 MR. DUNNE: I'm using it
41:54 25 colloquially?

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03:41:56 2 A. There may have been one or two cases
03:42:00 3 where my name may have appeared first. I didn't
03:42:02 4 attach any significance to that.

03:42:04 5 Q. Would you have been involved in
03:42:08 6 writing the patent applications for these
03:42:08 7 patents?

03:42:10 8 A. No, I did not. I was involved in the
03:42:14 9 process of putting together the laboratory
03:42:18 10 information or the experiment -- experimental
03:42:22 11 part for the patent. But the writing of the
03:42:28 12 patent, putting it in the correct format, would
03:42:30 13 have been the attorneys and more senior personnel
03:42:30 14 at that point.

03:42:34 15 Q. Would you have reviewed the patent
03:42:36 16 application to ensure that it was correct?

03:42:38 17 A. I would think that I would do that,
03:42:40 18 yes. Or at least help in that capacity.

03:42:48 19 MR. DUNNE: I would like to mark as
03:42:58 20 Defendants Williams Number 36 a United States
03:43:02 21 patent number 4,481,957.

22 (Williams Exhibit 36 for
23 identification, United States patent number
24 4,481,957.)

03:43:58 25 Q. Have you seen this patent before?

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03:43:58 2 A. It's been a while, but I have seen
03:44:00 3 this patent before.

03:44:02 4 Q. You're listed as the first inventor
03:44:04 5 on this patent; is that correct?

03:44:04 6 A. That's correct.

03:44:10 7 Q. Would the text beginning with
03:44:16 8 "Abstract," would that text represent the patent
03:44:20 9 application that was filed in order to --

03:44:22 10 A. I think it would perhaps describe the
03:44:26 11 patent that was filed, the abstract, if that's
03:44:26 12 what you're referring to.

44:28 13 Q. Then beginning on the next page,
03:44:30 14 would this be a restatement of the patent
03:44:32 15 application?

03:44:36 16 MR. NUNLEY: I object on the basis of
03:44:38 17 foundation.

03:44:40 18 MR. DUNNE: This is his patent. He's
03:44:42 19 listed as the inventor.

03:44:44 20 MR. NUNLEY: I realize that. All I'm
03:44:48 21 saying is, it sounds to me like the patent
03:44:48 22 application was prepared by somebody else.

03:44:52 23 MR. DUNNE: I'm trying to find that
03:44:52 24 out.

44:54 25 A. Certainly I think I stated that the

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patent application itself was put together by
attorneys, and -- within Philip Morris, and the
patent itself, after it had been put together,
based on the information we provided on the
experiments, would have then most likely been
reviewed by all three people named on this
document.

Q. So you would have reviewed the
substance of this patent for accuracy; is that
correct?

A. Based on my memory, that would be
correct.

Q. Do you know who would have drafted
the patent application that led to the issuance
of this particular patent?

A. It would have been someone in the
patent office at Philip Morris, and I cannot
remember exactly who, or who it might have been.
It would be a guess.

Q. What's your best estimate?

A. At that particular time, I'm not
sure. It was either Jim Schardt or maybe Art
Palmer. And I think Art Palmer is retired.

Q. On I believe the third page, under a

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column labeled 4, starting at line 5, the first
sentence reads, "An invention" -- actually, why
don't I ask you to read the first sentence.

A. "An invention bicyclic acylpyrazine
flavorant additive can be incorporated into the
tobacco in accordance with methods known and used
in the art."

Q. Do you know what that sentence refers
to when it talks about methods known and used in
the art?

A. My way of understanding, when we
would review the patent, my review of the patent
would have been to review the experimental
procedures. I would assume that this is some
sort of a legal terminology that a lawyer would
have put together.

Q. If you could read -- actually I'll
direct your attention to the middle of the
paragraph, the sentence starting "Alternatively,
the flavorant may be incorporated as part of a
concentrated tobacco extract which is applied to
a fibrous tobacco web as in the manufacture of
reconstituted tobacco."

Do you see that sentence?

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03:47:28 2 A. Yes.

03:47:30 3 Q. Does that refer to the RL type
03:47:34 4 process you described earlier?

03:47:44 5 A. I had no part in drafting that
03:47:48 6 sentence. It could refer to some sort of a
03:47:58 7 reconstituted tobacco process. Quite honestly at
03:48:00 8 this particular time I didn't pay attention to
03:48:02 9 that type of wording. I would have paid
03:48:02 10 attention to the experimental portion of the
03:48:04 11 patent.

03:48:06 12 Q. But is it your understanding that
48:08 13 that refers to the RL type process?

03:48:10 14 MR. NUNLEY: Objection.

03:48:14 15 Q. That you have testified about as a
03:48:20 16 part of the cross solubles base web study.

03:48:22 17 MR. NUNLEY: Objection, Steve. I
03:48:24 18 think it's been asked and answered. He says he
03:48:26 19 had no part in drafting it.

03:48:28 20 Q. You may answer.

03:48:30 21 A. I will say that I put no connection
03:48:34 22 at all between this particular set of work and
03:48:38 23 the cross solubles base web set of work. These
03:48:42 24 were entirely separate, in my mind, and in fact.

48:44 25 Q. Do you have any reason to believe

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2 that this is an inaccurate description of the
3 reconstitution -- of the process of manufacturing
4 reconstituted tobacco?

5 A. Based on the way this is drafted,
6 again, I would suggest that this would be
7 attorney terminology, that what they're trying to
8 do is trying to make sure these particular
9 flavors couldn't be used by someone else, and
10 they're trying to make this as broad reaching
11 coverage as they could.

12 I suppose they were putting in here
13 basically anything they could think of that might
14 possibly be used.

15 Q. This is a description written by
16 Philip Morris employees; is that your
17 understanding?

18 A. To the best of my knowledge, it would
19 be written by attorneys at Philip Morris.

20 Q. As part of your pyrazines work, did
21 you apply pyrazines to cigarettes and then have
22 the cigarettes subjectively analyzed?

23 A. As I recall, that was done, yes.

24 Q. Could you describe the process, how
25 you applied the pyrazines to cigarettes?

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03:50:10 2 MR. NUNLEY: Again, I don't know
03:50:12 3 whether you use the word "you" to mean
03:50:16 4 specifically David or whether done by somebody
03:50:16 5 else.

03:50:18 6 Q. I mean to include anyone working with
03:50:20 7 you on the pyrazines project.

03:50:28 8 A. Okay. As I recall, cigarettes, blank
03:50:34 9 cigarettes, I'm not even sure what variety, would
03:50:36 10 have been injected by syringe, the flavor would
03:50:40 11 have been injected by syringe, in ethanol. The
03:50:42 12 cigarettes would have been allowed to
50:46 13 equilibrate or to stand for a while, and then
03:50:48 14 the cigarette would be smoked, and see what type
03:50:52 15 of characteristic, flavor characteristic might be
03:50:52 16 involved.

03:50:54 17 Q. So the pyrazines would have been
03:50:56 18 included as part of the ethanol that was
03:50:58 19 injected?

03:51:00 20 A. Yes. The pyrazine itself would be
03:51:02 21 dissolved in the ethanol. Otherwise you could
03:51:06 22 not put it onto the cigarette based on the way we
03:51:12 23 were doing it. As I recall, the flavor was
03:51:16 24 injected via syringe directly into the cigarette
51:18 25 in ethanol.

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03:51:22 2 Q. Do you know how much ethanol was put
03:51:24 3 into the cigarette?

03:51:34 4 A. That would be a guess on my part at
03:51:34 5 this point.

03:51:40 6 Q. Looking at I guess two more pages,
03:51:54 7 column 8, under example 7, the paragraph that
03:51:56 8 starts, "Cigarettes are fabricated using typical
03:52:00 9 blends of tobaccos treated with an ethanolic
03:52:00 10 solution" --

03:52:02 11 MR. NUNLEY: I'm sorry. I thought
03:52:06 12 you were talking about numeral seven. You're
52:08 13 talking about Roman numeral 7?

03:52:10 14 MR. DUNNE: I'm sorry, Roman numeral
03:52:10 15 7, line 32, I believe.

03:52:12 16 MR. NUNLEY: Can the witness have a
03:52:16 17 second to review this? He said he hadn't seen it
03:52:18 18 in some time.

03:52:18 19 MR. DUNNE: Sure.

03:52:38 20 A. Okay.

03:52:40 21 Q. Would you have reviewed this
03:52:44 22 language, the language in this paragraph under
03:52:46 23 example Roman numeral 7 for accuracy?

03:52:52 24 A. Perhaps I would have reviewed the
52:56 25 part where it says "Percent," maybe done some

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calculations to determine that that was in fact
the level of pyrazine we were applying for
subjective evaluation.

Q. Does this refresh your recollection
as to how much pyrazine you were applying to the
cigarettes?

MR. NUNLEY: I thought the question
earlier was -- pyrazine or ethyl alcohol?

MR. DUNNE: Earlier it was ethyl
alcohol. I'm going to start with pyrazine and
then ask the ethyl alcohol.

A. This refreshes my memory to indicate
that based on that example there, they were
applying this particular flavorant at five parts
per million.

Q. Do you know -- does this refresh your
recollection as to how much ethanol would have
been added to the cigarette?

A. Again, you can -- it's easy to --
it's easy to mix this up, because you can
dissolve -- different things dissolve different
ways. In some case it is may take more
dissolvent to dissolve a compound, in some cases
it may take less.

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Based on this, though, probably we could have gotten this amount of a pyrazine into maybe 10 microliters of ethanol.

Q. Then it talks about untreated control cigarettes are prepared using the identical tobacco blend, but with those untreated control cigarettes, did you inject any ethanol?

A. I'm trying to remember. It's been a while. But it seems that the cigarettes would have been injected -- one set of cigarettes would have been injected with the pyrazine and the ethanol, or the pyrazines dissolved in the ethanol, and again, you had to do that to apply the flavor.

In the control set we probably applied an equal amount of ethanol. That would take the variable out, the alcohol variable out.

Q. That would have been ten milliliters --

A. Ten microliters.

MR. NUNLEY: Steve, are you going to be able to finish with him today, or --

MR. DUNNE: No, I don't believe so. I believe this will be the last exhibit for

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03:55:24 2 today, if that's all right.

03:55:28 3 MR. DUNNE: I'll ask the reporter to
03:55:34 4 mark as Defendants Williams Number 37, U.S.
03:55:42 5 patent 4,535,791.

6 (Williams Exhibit 37 for
7 identification, U.S. patent 4,535,791.)

03:56:24 8 A. I'm not going to take the time to
03:56:24 9 read the whole document.

03:56:26 10 Q. Do you recognize this document?

03:56:28 11 A. Again, it's been a while, but I do
03:56:28 12 recognize the document.

56:30 13 Q. And can you describe this document
03:56:32 14 for me.

03:56:36 15 A. Again, it's a patent on a particular
03:56:40 16 set of acylpyrazines.

03:56:42 17 Q. And you're listed as the first
03:56:44 18 inventor; is that correct?

03:56:44 19 A. That's correct.

03:56:54 20 Q. Again, you would have reviewed the
03:56:56 21 patent application for this patent to ensure that
03:56:58 22 it was accurate; is that correct?

03:57:02 23 A. In terms of -- in terms of what I
03:57:04 24 contributed to the patent, I would review that
57:04 25 portion, yes.

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03:57:08 2 Q. And the patent application would have
03:57:10 3 been -- this patent application would have been
03:57:12 4 written by Philip Morris employees; is that
5 correct?

03:57:18 6 A. To my understanding that's the way it
03:57:18 7 worked, yes.

03:57:24 8 Q. Do you see on --

03:57:24 9 MR. NUNLEY: Were you including in
03:57:24 10 that, when you say "Philip Morris employees," are
03:57:26 11 you including either in-house or outside
03:57:26 12 counsel?

03:57:28 13 MR. DUNNE: I was including in-house
03:57:28 14 counsel.

03:57:32 15 A. To make the record straight, I know
03:57:36 16 that in-house counsel was definitely involved.
03:57:38 17 I'm not sure if outside counsel was involved or
03:57:38 18 not.

03:57:44 19 Q. On the fourth page under column 5.

03:57:52 20 A. I'm not sure which fourth page.

03:57:54 21 Q. I'm sorry. Column 5.

03:57:54 22 A. Okay.

03:58:06 23 Q. Around line 49 to 52, it says,
03:58:10 24 "Alternatively the flavorant may be incorporated
03:58:14 25 as part of a concentrated tobacco extract which

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03:58:16 2 is applied to a fibrous tobacco web as in the
03:58:18 3 manufacture of reconstituted tobacco."

03:58:20 4 Have I read that correctly?

03:58:22 5 A. Yes, you did.

03:58:30 6 Q. Is that statement about the
03:58:32 7 manufacture of reconstituted tobacco
03:58:42 8 inconsistent -- strike that. Do you have any
03:58:50 9 reason to believe -- strike that also.

03:59:00 10 Let me move to two more pages, under
03:59:10 11 column 10. Again, under example 7, could you
03:59:16 12 read the first paragraph to me, under -- I'm
03:59:18 13 sorry, example 8.

03:59:20 14 A. Example 8, "Preparation of present
03:59:24 15 invention. Smoking compositions containing a
03:59:30 16 novel acylpyrazine ether flavorant. Cigarettes
03:59:34 17 fabricated to deliver 8 milligrams of tar using a
03:59:36 18 typical blend of tobaccos are treated with an
03:59:40 19 ethanolic solution of an acypyrazine ether
03:59:44 20 flavorant as listed in the table, with the
03:59:50 21 indicated PPM of the compound by weight of the
03:59:50 22 tobacco.

03:59:50 23 "Untreated control cigarettes are
03:59:54 24 prepared using the identical tobacco blend and
03:59:58 25 spiked with unflavored ethanol, and the treated

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04:00:00 2 cigarettes are compared to the controls by an
04:00:02 3 experienced smoking panel."

04:00:06 4 Q. When it refers to the untreated
04:00:12 5 cigarettes being spiked with unflavored ethanol,
04:00:14 6 is that a reference to the addition of 10
04:00:16 7 microliters of ethanol?

04:00:22 8 A. Again, I only injected cigarettes on
04:00:26 9 a limited basis, and in my recollection the ones
04:00:28 10 I was involved with were probably 10 microliters
04:00:30 11 of ethanol. I don't know if others used
04:00:32 12 different volumes of ethanol or not.

00:36 13 But I would imagine when -- yes, what
04:00:38 14 it's referring to is the fact that ethanol was
04:00:42 15 added to control cigarettes.

04:00:46 16 MR. DUNNE: No further questions.

04:00:46 17 MR. NUNLEY: I have a --

04:00:48 18 MR. DUNNE: Let me say for the record
04:00:54 19 that we're not finished with this witness and
04:00:54 20 we'll have to schedule another day.

04:00:54 21 MR. NUNLEY: I understand.

04:00:56 22 MR. KILLORY: Will we be able to get
04:00:58 23 that now, Chip?

04:01:00 24 MR. NUNLEY: I just was giving up
01:00 25 dates yesterday.

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MR. DUNNE: Shall we go off the record?

MR. NUNLEY: No, I want to stay on the record because I have some questions for the witness.

MR. DUNNE: I haven't finished my examination, so I don't think you're entitled to examine the witness at this point.

MR. NUNLEY: I'll tell you what. If you're going to take that position, that doesn't bother me. But I would take the position that you're not entitled to use anything given in the deposition in any papers in the case until I have a chance to inquire of the witness.

You've asked for -- Steve, you've asked for two days. We made him available for two days. There's one very, very limited portion of his testimony that concerns document production. I just want to clear that up. It would take probably three questions. And I would prefer you hear it coming from the witness as opposed to hear it coming from me.

But if you won't let the witness state it, then I want to state it for the record

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04:01:58 2 myself.

04:02:00 3 MR. DUNNE: Let's go off the record
04:02:00 4 for a second.

04:02:06 5 THE VIDEO OPERATOR: It is 4:02. We
04:02:06 6 are off the record.

04:02:08 7 (Discussion off the record.)

04:04:22 8 THE VIDEO OPERATOR: It is 4:04. We
04:04:22 9 are on the record.

04:04:30 10 MR. NUNLEY: Counsel just had a
04:04:32 11 discussion off the record on the subject of
04:04:36 12 certain testimony of the witness, I believe, that
04:40 13 was given this morning about a search for the
04:04:44 14 documents in this case. I had asked to have the
04:04:46 15 witness testify because I think it's more
04:04:48 16 appropriate if it comes from the witness as
04:04:50 17 opposed to from me.

04:04:52 18 Counsel for ABC have asked instead
04:04:56 19 that I state it so that we don't have a situation
04:05:00 20 where I've begun an examination of the witness,
04:05:02 21 albeit on a very limited area, while they're not
04:05:06 22 completed with their direct examination.

04:05:08 23 The point I wanted to make was that
04:05:12 24 Mr. Williams was asked whether -- I think he was
05:14 25 asked -- and I don't have the specific language

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in front of me -- the last search that was
conducted of files in his office, and I believe
the testimony was three to four months ago.

What I told Mr. Dunne and Mr. Killory
was that at the beginning of Mr. Williams's
deposition preparation or perhaps the day before
his deposition preparation was formally to begin,
he and I were reviewing ---and if you want me to
do this outside the presence of the witness, I'm
happy to to it.

MR. DUNNE: Yes, please.

THE WITNESS: Thanks.

(The witness left the deposition
room.)

MR. NUNLEY: Mr. Williams reviewed
documents that had been produced to ABC out of
the vendor disclosure information for IFF. He
had determined at that time that there were some
additional documents related to IFF that have now
previously been collected and redacted and made
available to ABC.

At that time those documents were
gathered, they were immediately copied and
redacted and produced, perhaps not the next day

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but perhaps two days after that.

And I think the documents, although I don't have production logs in front of me, I believe the documents include those that have been marked in this exhibit -- in this deposition, number 6, number 7, number 8, number 9, number 10, number 11, number 12, number 13, number 14, number 15, number 16, number 17, number 19, number 20, number 21, number 22, perhaps number 23, number 24, perhaps number 25, perhaps number 26, number 27.

I believe that to be the extent, although instead of relying on my memory I would refer back to the production that was made I believe a week and a half ago.

I would also say, just to state for the record, that I have asked for the opportunity to inquire of Mr. Williams. Counsel for ABC have rejected that request. Mr. Williams was noticed for two days of deposition. He's been here for two days. And given that, I would object to the use of his testimony until his deposition is complete -- by ABC, until his testimony is complete and we've had an opportunity to

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cross-examination him.

MR. DUNNE: Let me just state for the record, we clearly don't accept that objection, and that the documents that Mr. Nunley referred to are documents we received on July 20th, 1995.

MR. KILLORY: Since I was a party to the conversation off the record with counsel, in one other respect I would like to clarify it.

I believe it's more accurate to say that Mr. Nunley offered the option of doing it through questioning or through the presentation by counsel that he's just made. We indicated that we would prefer he do it by the presentation by counsel, not by questioning of the witness, since we're in the middle of the deposition.

The second clarification would simply be, we didn't notice this for two days. We noticed this from day to day as it continues. As was the custom in this case, we attempted to schedule enough time to complete it. We have not been able to complete it, but it wasn't just noticed for two days.

MR. NUNLEY: I would add to that, Ted, that my understanding is, in scheduling

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changes, that ABC gives us the days that it wants
for the witness. I'm not saying you're
foreclosed to come back. I'm simply saying you
had asked for two days at this time with him, and
that's what he's been made available for.

MR. KILLORY: I would note on the
scheduling, having been a part of the scheduling
process, that we have been very accommodating to
changes in schedule dealing with the Wachtell
people in terms of schedule and last minute
changes.

And there's been an attempt to work
out a very busy schedule in a short period of
time. And that's one of the dictates as to
giving our best estimates of how much time it
takes. My own clarification was, this notice was
not limited to these two days.

MR. NUNLEY: No question about that.
All I'm saying is, my understanding is when ABC
indicated to us for scheduling purposes what they
felt they would need for Mr. Williams, they asked
for two days.

MR. DUNNE: Correct me if I'm wrong,
but I believe we indicated two days before we

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received the documents produced on July 20th, and
also before we received the documents produced
this past Saturday, just two days ago.

MR. NUNLEY: But nothing subsequent
in the way of asking for additional time.

MR. DUNNE: Let's go off the record.

THE VIDEO OPERATOR: It is 4:10.
This is the end of tape 6 and is the end of
today's taping of the deposition of David
Williams. We are off the record.

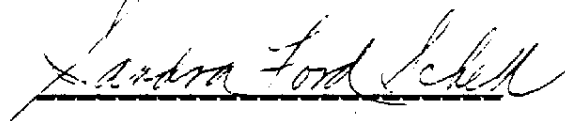
(Time noted: 4:10 p.m.)



DAVID LEE WILLIAMS

Subscribed and sworn to before me

this 30th day of July, ~~1995~~ 1996



My Commission Expires November 30, 1998

MANHATTAN REPORTING CORP.

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, LEE A. BURSTEN, a Registered
Professional Reporter and Notary Public within
and for the State of New York, do hereby certify:

That DAVID LEE WILLIAMS, the witness
whose continued deposition is hereinbefore set
forth (pages 225 through 455) was previously duly
sworn, and that such continued deposition is a
true record of the testimony of said witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 4th day of August, 1995.


LEE A. BURSTEN, R.P.R.

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4	identification, Questions, IFF history,		
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20	Corporation.).....	394	8
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22	identification, set of documents,		
23	"Nicotine".).....	399	11
24	(Williams Exhibit 36 for		
25	identification, United States patent		

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2 number 4,481,957.)..... 430 21
3 (Williams Exhibit 37 for
4 identification, U.S. patent 4,535,791.).. 440 5

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Keyword: (INSERT
Not Found.

Keyword: DIR

[249,12]

DIR Q. Underneath the list it appears to

[256,2]

DIR Q. Do you know whether these two codes

[261,5]

DIR Q. Does IFF deliver flavors to Philip

[280,6]

DIR Q. And the reference to "need to ask

[302,19]

DIR Q. Was there a change in the manner in

[318,13]

DIR Q. And what other company was that?

Keyword: REQ

[360,12]

REQ MR. DUNNE: I'll request, if such a

Keyword: RUL

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